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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/952,475	03/09/1998	FUMIKI MORIMATSU	2520-109P	2745

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BIRCH STEWART KOLASCH & BIRCH
PO BOX 747
FALLS CHURCH, VA 22040-0747

EXAMINER

CORBIN, ARTHUR L

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 06/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

08/952,415

Applicant(s)

MORIMATSU ET AL

Examiner

ARTHUR L. CORBIN

Group Art Unit

1761

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 4-28-03

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 3, 7, 10-13, 16, 17 is/are pending in the application.

Of the above claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 3, 7, 10-13, 16, 17 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some ☒ None of the:

☒ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____.

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 28, 2003 has been entered.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3, 7, 10-13, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giese.

Giese discloses low-fat ground meat products, having less than half of the fat of conventional meat products, containing 2% soy protein isolate, and soybean oil which partially replaces beef fat and lowers plasma cholesterol (pages 100, 103 and Table 1). The fatty acids claimed in ~~claim 4~~ claim 4 are naturally present in soybean oil. Finding the optimum amount and ratio of vegetable oil, animal fat and soybean protein to be included in the meat products would require nothing more than routine experimentation by one reasonably skilled in this art.

4. Claims 3, 7, 10-13, 16 and 17 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Bonkowski in view of Helmer et al.

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Bonkowski discloses low fat, ground meat products containing about 4% soy protein isolate and possessing cholesterol-lowering properties. It would have been obvious to replace part of the animal fat in Bonkowski's meat products with soybean oil since soybean oil is conventionally used as an animal fat replacer in meat products, e.g., sausage products, as evidenced by Helmer et al (col. 5, lines 44-60).

Finding the optimum amount and ratio of vegetable oil, animal fat and soybean protein to be included in the meat products would require nothing more than routine experimentation by one reasonably skilled in this art.

5. Claims 3, 7, 10-13, 16 and 17 are further rejected on the grounds of ^{res} ~~the~~ judicata as being claims which are identical to those held to be unpatentable in the ^{Board} ~~Board~~ of Appeals decision dated February 27, 2003.

6. Applicant's arguments filed April 28, 2003 have been fully considered but they are not persuasive. Regardless of the source of the fatty acid composition claimed in claim 11, the fact remains that applicant's composition is disclosed by Giese, or Bonkowski as above modified. When all of the components of applicant's composition are mixed together the composition itself cannot distinguish which component provides the fatty acid composition as claimed.

7. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued

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examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is 703-308-3850. The examiner can normally be reached on Tuesday-Friday from 10 am to 7:30 pm. The examiner can also be reached on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

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A. Corbin/mn
June 9, 2003


ARTHUR L. CORBIN
PRIMARY EXAMINER
6-10-03